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May 11, 2007

VIA HAND DELIVERY

Charles L. A. Terreni, Esquire
Chief Clerk of the Commission
SC Public Service Commission
101 Executive Center Drive
Columbia, S.C. 29210

SC PUBLIC SERVICE COMMISSION
2007 MAY 11 11:11:54
RECEIVED

RE: Application of Ashley Oaks Water System, Incorporated for Approval of Transfer
of a Transfer of Its Water System to the City of Columbia
Docket No. 2007-41-W

Dear Mr. Terreni:

Enclosed for filing you will find the original and six (6) copies of the Return to Motion for Expedited Review in the above-referenced document.

Please date stamp the one extra copy for our office and return to me via our courier.

Should you have questions, please feel free to contact me.

Very truly yours,

ELLIOTT & ELLIOTT, P.A.


Charles H. Cook

CHC/mlw

Enclosures

c: All parties of record (w/enc.)

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2007-41-W

RECEIVED
2007 MAY 11 AM 11:55
SOUTH CAROLINA
PUBLIC SERVICE COMMISSION

IN THE MATTER OF:)	
)	
APPLICATION OF Ashley Oaks Water System))	RETURN TO MOTION FOR
Incorporated for Approval of a Transfer of Its))	EXPEDITED REVIEW
Water System to the City of Columbia))	

The Office of Regulatory Staff (“ORS”) has moved for an Order of the Public Service commission of South Carolina (“Commission”) to grant review of this matter on an expedited basis without the requirement of a formal hearing, requesting that the Commission issue its order approving the transfer of the Ashley Oaks water system to the City of Columbia. Accordingly, for the reasons set out herein, the intervenor(s) Stewart G. Young and Roberta C. Young, (“Youngs”) as customer parties to this proceeding with real interests and rights would object to the ORS’s motion and request a hearing on all issues raised in this docket.

First, questions are raised concerning the competency and capacity of the parties to this docket to effect the transfer requested. The record reflects that Michael D. Shelley, pro se, filed a letter application entitled, “Ashley Oaks Water Co., Inc.”(No Record Of Which Exists at the Secretary of State of South Carolina) attaching a contract with the City of Columbia. Executing the contract was Michael D. Shelley, President, Ashley Oaks Water Company, Inc. The Application of record purports to address a contract executed January 17, 2007, to sell a water system to the City of Columbia executed by Ashley Oaks Water Company, Inc., Inc., Ashley Oaks Development Corporation, Inc.,

Michael D. Shelley d/b/a/ Ashley Oaks Development Corporation, and NORTHEAST REALTY AND BUILDERS, INC., collectively and singularly "Ashley Oaks." None of the signatories was actually the Applicant Ashley Oaks Water System, Inc., the only regulated party by the Commission.

On April 27, 2007, an additional Contract dated January 17, 2007 was faxed to the Public Service Commission as evidenced in the docket from a fax cover of Ashley Oaks Development, Inc. signed by Mike Shelley. Both agreements purport to transfer a water system, less and except for wells and water lines to the wells which the signing parties claim ownership to.

The Youngs contest both contracts and are properly before this Commission not only as customers but also as parties to the alleged easements to accommodate the water system. Additionally Mrs. Roberta C. Young is President of the Ashley Oaks Homeowners Association, 2-2A. Accordingly, the Youngs' rights are clearly affected by the requested transfer.

The ORS suggests that since water is in short supply in the current well system the rights of the Youngs are not of such standing as to be entitled to their day in court. The Youngs' rights to cross examine witnesses, to prove multiple inconsistencies within the application, to present evidence, and to clarify the record of ownership as to their well, easements in gross, and property interest would be denied if the Commission granted the ORS motion. The Youngs deserve their right to be heard and to participate before the Commission based upon their Petition to Intervene, matters left unanswered by a previous Order of the Commission addressing this water system, and most importantly their right to due process under law.

Relying on matters rising outside of this record and acting as a judge and jury, the ORS seeks to avoid a hearing on the merits and hasten the transfer of the water system to the City of Columbia.

However, the Youngs are entitled to a hearing. In *Smith & Smith, Inc. v. The South Carolina Public Service Commission*, 271 S. C. 405; 247S.E.2d 677 wherein then Chief Justice Ness quoted: “There can be no compromise on the footing of convenience or expediency, or because of a natural desire to be rid of harassing delay, when that minimal requirement (of due process) has been neglected or ignored.” *Ohio Bell Telephone Co.*, 301US at305, 57 S. Ct. at 731. Citing this case further, Justice Cardozo of the United States Supreme Court observed: “All the more insistent is the need, when power has been bestowed so freely, that the ‘inexorable safeguard’...of a fair and open hearing be maintained in its integrity...The right to such a hearing is one of ‘the rudiments of fair play’...assured to every litigant by the Fourteenth Amendment as a minimal requirement.”

The opinion of the South Carolina Supreme Court further stated: “We recognize the wide amount of discretion vested in the Public Service Commission by the legislature. However, in order to insure the wise application of the Commission’s authority, a full hearing, where the true facts surrounding the proposed transfers are revealed, is essential. See2Am.Jur.(2d), Administrative Law, Section 397.

In the case of *Stono River Environmental Protection Association and Sierra Club v. South Carolina Department of Health and Environmental Control*, (“DHEC”) et al. 305 S.C. 90;(406S.E.2d 340) the South Carolina Supreme Court reversed the actions of the DHEC citing S. C. Constitutional Art.1, Section 22 reading: “No person shall be finally

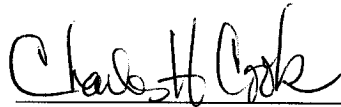
bound by a judicial or quasi judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard ...and he shall have in all such instances the right to judicial review.”

The ORS reliance on Commission Order No. 92-406 is misplaced. There, the Commission found it had no jurisdiction to adjudicate a clearly private dispute. Here, there is however no lack of jurisdictional opportunity for the Commission to hear the testimony and evidence of the intervenors in this matter in the transfer of “Ashley Oaks” water system (be whoever the entities). More interesting to the case at hand is whether the Commission has jurisdiction to approve this contract with the City of Columbia which is obviously executed by several parties not previously known to have been authorized to operate a water system by the Commission.

Finally, the ORS has provided information outside of the record to support the urgency for an expedited review. The ORS nevertheless has not offered information from the City of Columbia as to when it can be ready to hook up to the water system in question, regardless of when the Commission determines the appropriateness for transfer. Intervenors suggest that the current schedule set by the Commission for the hearing will remain timely and provide the higher urgency of the rule of law. As this return is being written, on information, use and belief, the Intervenors represent that the water supply is flowing at its normal capacity.

For the foregoing reasons, the ORS’s Motion to expedite the transfer of the water system of the “Ashley Oaks” group, is prejudicial, arbitrary, a denial of due process, and seeks for the Commission to exceed the statutory authority. Accordingly, ORS’s Motion should be denied and the Intervenors allowed a formal hearing.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Charles H. Cook". The signature is written in a cursive style with a horizontal line extending to the right.

Charles H. Cook, Esquire

Scott Elliott, Esquire

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Columbia, SC 29205

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Attorney for Intervenors, Stewart G. Young
and Roberta C. Young

Columbia, South Carolina
May 11, 2007

CERTIFICATE OF SERVICE

The undersigned employee of Elliott & Elliott, P.A. does hereby certify that (s)he has served below listed parties with a copy of the pleading(s) indicated below by mailing a copy of same to them in the United States mail, by regular mail, with sufficient postage affixed thereto and return address clearly marked on the date indicated below:

RE: Application of Ashley Oaks Water System, Incorporated.
for Approval of a Transfer of Its Water System to the City
of Columbia

DOCKET NO.: 2007-41-W


PARTIES SERVED: Nanette S. Edwards, Esquire
Wendy B. Cartledge, Esquire
Office of Regulatory Staff
P.O. Box 11263
Columbia, SC 29211

Michael D. Shelley, President
Ashley Oaks Water System, Inc.
209 Blythewood Road
Blythewood, SC 29016

H. Clayton Walker, Esquire
Walker & Reibold, LLC
P.O. Box 61140
Columbia, SC 29260

PLEADING: RETURN TO MOTION FOR
EXPEDITED REVIEW

May 11, 2007



Marcia W. Walters, Legal Assistant

SC 10-1-2007
2007 MAY 11 AM 11:55
FILED